

REMARKS**I. OVERVIEW**

Claims 1-15 have been rejected under 35 U.S.C. § 103(a) as being obvious over either Beldham or Japanese Patent 8-229292 in view of Blanchet, Thompson or Kenney. Applicants respectfully traverse these rejections, and request reconsideration and allowance of the claims.

II. THE BLANCHET, THOMPSON AND KENNEY PATENTS ARE NON-ANALOGOUS ART

The Blanchet, Thompson, and Kenney patents are non-analogous art, and are thus improper to cite in a rejection of the claims. More particularly, as decided in MPEP 2141.01(a), determination that a reference is non-analogous is a two-step test. "In order to rely on a reference as a basis for rejection of an Applicant's invention, [1] the reference must either be in the field of applicant's endeavor or, if not, [2] then be reasonably pertinent to the particular problem of which the inventor was concerned." *In re Oetiker*, 977 F.2d 1443 (Fed. Cir. 1992).

A. The Cited References Are Not in the Field of Applicants' Endeavor

The field of endeavor for the current invention is a clothes washing machine. Blanchet discloses a gasoline pump. See column 1, lines 14-16 and column 2, lines 65-68. Thompson relates to a dispenser for windshield washer fluid. See column 2, lines 33-35 and 51-54. There is no indication that Thompson's reference to soap solutions (column 8, lines 7-14) has anything to do with washing machines. Kenny also relates to a windshield washer fluid dispensing system. See Title. Thus, none of the cited secondary references relate to the Applicant's washing machine field of endeavor.

B. The Cited References are not Reasonably Pertinent to the Particular Problem in which the Inventor was Concerned

As noted in MPEP 2141.01(a), "[a] reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem." *Wang Laboratories v. Toshiba Corp*, 993 F.2d 858 (Fed. Cir. 1993). Furthermore, a "reference may be considered analogous art if subject matter disclosed therein is relevant to the particular problem with which the inventor is involved." MPEP 2141.01(a).

The problem with which an inventor is concerned can be found by the stated objectives of the invention. As noted in paragraph 3, the primary objective of the current invention is an improved washing machine having a bulk detergent dispenser which is automatically activated at an appropriate time in the washing cycle of the machine after a monetary payment is made by the user. None of the secondary references are concerned with such timing of the liquid dispensement. The primary objective of the Blanchet patent is found in column 2, line 28-33 as an automatic metering liquid dispenser which upon the insertion of a coin dispenses a quantity of liquid that is delivered intermittently in such a way that each volume delivered corresponds to the amount of the coin deposited, on the basis of the unit price. The object of the Thompson patent is given in column 2, lines 33-41 as a method for dispensing bulk fluid such as windshield washer fluid, in which the wastage/spillage normally encountered in a consumer emptying a one gallon or four liter container of the windshield washer fluid into a vehicle, can be eliminated but at the same time, providing for a convenient source which would be readily available to consumers of such fluids from a central point. Finally, the object of the Kenney patent can be found in column 3, lines 14-17 as a metered windshield washer solution dispensing system for

use by the public at car washes, convenience stores, and gas stations. Thus, none of the cited secondary references are relevant to the particular problem in which the inventor of the current invention is involved, namely providing a washing machine wherein monetary payment dispenses detergent at an appropriate time of a wash cycle.

Furthermore, the current situation can be likened to *In re Oetiker* in which "the reference was not within the field of the applicant's endeavor, and was not reasonably pertinent to the particular problem with which the inventor was concerned because it had not been shown that a person of ordinary skill, seeking to solve a problem of fastening a hose clamp, would reasonably be expected or motivated to look to fasteners for garments." MPEP 2141.01(a) referring to *In re Oetiker*, 977 F.2d 1443 (Fed. Cir. 1992). Similarly, a person of ordinary skill seeking to solve a problem of creating a washing machine with pay activated bulk detergent dispenser could not reasonably be expected or motivated to look to bulk dispensing apparatus systems for dispensing gasoline or windshield wiper fluid for automobiles.

Accordingly, the cited secondary references are not reasonably pertinent to the particular problem in which the inventor was concerned. Therefore, the Examiner's rejections should be reconsidered and withdrawn.

C. The Cited References Have Different Structure and Function Than the Applicant's Invention

The published U. S. Application No. US 2003/0154557 A1 classifies the current application as U.S. Class 8/158; 68/12.18. On the other hand, all three of the secondary references (Blanchet, Thompson and Kenney) are categorized as U.S. Class 222. Again, citing MPEP 2141.01(a) "[w]hile Patent Office classification of references and the cross-references in the official search notes of the class definitions are some evidence of 'non-analogy' or 'analogy'

respectively, the court has found 'the similarities and differences in structure and function of the inventions to carry far greater weight.'" *In re Ellis*, 476 F.2d 1370 (CCPA 1973). Therefore, even if the fact that the current invention and all three of the cited secondary references are of a completely different class is not convincing, they are also completely different in "structure and function".

The current invention's structure and function is of a washing machine. On the other hand, the Blanchet patent is of an automatic variable-volume mixing dispenser which functions basically as a mechanical liquid pump which limits the liquid flow by a shorter stroke of the pump due to a stop on the piston allowing the cylinder to fill with less liquid. The Thompson patent is a bulk dispensing apparatus system providing a system for dispensing fluid, such as windshield washer fluid, incorporating a storage tank and a second tank of a smaller size and separate pumps are employed for feeding liquid from the bulk tank to the smaller reservoir, and from the reservoir through a nozzle to a receptacle on demand. Finally, the Kenney patent is a metered windshield washer fluid dispensing system which can comprise an air compressor to provide even fluid flow or in the alternative it can be gravity-fed. The compressor driven embodiment comprises a fluid tank, a pump, a pressure regulator, a regulator gauge, and an adjustable timer, solenoid, access to a remote power supply, a step down transformer, and an elongated dispensing nozzle with a shut-off control that is easily operable by customers to prevent over fill. Thus, the three cited secondary references are vastly different in structure and function from the current invention. In light of *In re Ellis*, the Examiner's rejections use non-analogous art and should be reconsidered and withdrawn.

III. THERE IS NO CLEAR AND OBJECTIVE TEACHING FOR COMBINING THE CITED REFERENCES

The Examiner concludes, without any support in the references, that it would be obvious to combine the teachings of the references. However, as the Federal Circuit explained in *In re Fitch*,

Obviousness can not be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination. Under §103, teaching of references can be combined only if there is some suggestion or incentive to do so. Although couched in terms of combining teachings found in the prior art, the same inquiry must be carried out in the context of a proported obvious "modification" of the prior art. The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification." (Emphasis added) *In re Fitch*, 23 U.S.P.Q. 1780, 1783-84 (Fed. Cir. 1992).

It was further stated by the Federal Circuit in *Ex Parte Levengood* that:

"...an Examiner cannot establish obviousness by locating references which describe various aspects of a patent applicant's invention without also providing evidence that the motivating force which would compel one skilled in the art to do what the patent applicant has done." *Ex Parte Levengood*, 28 U.S.P.Q.2d 1300, 1302 (Fed. Cir. 1993).

As the Board of Patent Appeals and Interferences has stated, "citing references which merely indicate that isolated elements and/or features recited in claims are known is not sufficient basis for concluding that the combination of claimed elements would have been obvious." *Ex parte Hiyamizu*, 10 U.S.P.Q.2d 1393, 1394 (B.P.A.I. 1988).

In short, as stated by the Federal Circuit, "It is wrong to use the patent-in-suit as a guide through the maze of prior art references, combining the right references in the right way so as to achieve the result of the claims-in-suit." *Orthopedic Equipment Company v. United States*, 702 F.2d 1005, 1012, 217 U.S.P.Q. 193, 199 (Fed. Cir. 1983).

The Federal Circuit has also explained that there must be "some objective teaching" leading to the combination. *In re Fitch*, 972 F.2d 1260, 1265 (Fed. Cir. 1992). As further explained in *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999) this showing must be "clear and particular."

Here, all the Examiner has done is to find references which allegedly disclose different aspects of the Applicants' invention. However, the Examiner has provided no clear and particular objective teaching leading to the combination of the primary and secondary references. Therefore, the § 103 rejections are fatally flawed and should be withdrawn.

The Examiner notes in paragraph 2 that the mere existence of old and well-known bulk fluid dispensers makes it obvious to modify the Beldham or Japanese 292 patent so as to have a washing machine with a bulk detergent dispensing system incorporated into it as obvious to one having ordinary skill in the art. However, there is no evidence that a person having ordinary skill in the washing machine or laundromat art would consider combining bulk fluid dispensing systems for dispensing automotive fluids with the laundry washing method or washing machine of the present invention. Therefore, the Examiner's § 103 rejection is improper and should be withdrawn.

Accordingly, Applicants respectfully request that a Notice of Allowance be issued for all claims.

IV. CONCLUSION

No fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

Reconsideration and allowance is respectfully requested.

Respectfully submitted,



BART A. FISHER, Reg. No. 55,181
MCKEE, VOORHEES & SEASE, P.L.C.
801 Grand Avenue, Suite 3200
Des Moines, Iowa 50309-2721
Phone No: (515) 288-3667
Fax No: (515) 288-1338
CUSTOMER NO: 27139

Attorneys of Record

- pw -